

reconsider the previous denial or to release the requested documents, where a determination is made that intervening circumstances or additional facts not known at the time of denial have or may have eliminated any need or justification for withholding the requested documents.

(ii) The Secretary may reconsider a denial being appealed if such intervening circumstances or additional facts come to the attention of the Secretary while an appeal is pending.

(e) *Time extensions in unusual circumstances; failure to comply with time limits*—(1) *Time extensions*. In unusual circumstances, as defined in 5 U.S.C. 552(a)(6), the time limits specified in paragraph (b)(1) and paragraph (d)(3) of this section may be extended for a period of time not to exceed 10 working days by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. The extension of time may be divided between the initial and appellate reviews but the total extensions relating to any request and resulting appeal may not exceed 10 working days.

(2) *Failure to comply with time limits*. If the Board fails to comply with the time limits and extensions specified in this section, the Board or other responsible Board employee shall, where practicable, give notice to the requester, stating the reasons for the delay and the date by which the Board expects to dispatch its determination. Without prejudice to the legal remedies provided the requester in 5 U.S.C. 552, the Board shall continue processing the request as quickly as possible and shall dispatch its determination when reached in the same manner as if it had been reached within the applicable time limits.

§ 261.10 Fee schedules; waiver of fees.

(a) *Fee schedules*. Records of the Board available for public inspection and copying are subject to a written Schedule of Fees for search, review, and duplication. (See appendix A for Schedule of Fees.) The fees set forth in the Schedule of Fees reflect the full allowable direct costs of search, duplication, and review, and may be adjusted

from time to time by the Secretary to reflect changes in direct costs.

(b) *Fees charged*. The fees charged only cover the full allowable direct costs of search, duplication, or review.

(1) *Direct costs* mean those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under § 261.9 of this regulation. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Duplication* refers to the process of making a copy of a document necessary to respond to a request for disclosure of records, or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(3) *Review* refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Commercial use*. (1) The fees in the Schedule of Fees for document search, duplication, and review apply when records are requested for commercial use.

(2) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(3) In determining whether a requester properly belongs in this category, the Secretary shall look first to

the use to which a requester will put the documents requested. Where a requester does not explain its purpose, or where its explanation is insufficient, the Secretary may seek additional clarification from the requester before categorizing the request as one for commercial use.

(d) *Educational, research, or media use.*

(1) Only the fees in the Schedule of Fees for document duplication apply when records are not sought for commercial use and the requester is a representative of the news media, or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. However, there is no charge for the first one hundred pages of duplication.

(2) *Educational institution* refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education which operates a program of scholarly research.

(3) *Noncommercial scientific institution* refers to an institution that is not operated on a *commercial* basis (as that term is used in paragraph (c) of this section) and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(4) *Representative of the news media* refers to any person that is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(e) *Other uses.* For all other requests, the fees in the Schedule of Fees for document search and duplication apply. However, there is no charge for the first one hundred pages of duplication or the first two hours of search time.

(f) *Aggregated requests.* If the Secretary reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests, each seeking portions of a document or documents solely for the purpose of avoiding the assessment of fees, the Secretary may aggregate such requests and charge accordingly. It is considered reasonable for the Secretary to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(g) *Payment procedures*—(1) *Fee payment.* The Secretary may assume that a person requesting records pursuant to §261.9 of this regulation will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (h) of this section.

(2) *Advance notification.* If the Secretary estimates that charges are likely to exceed \$25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance willingness to pay fees as high as those anticipated. Upon receipt of such notice the requester may confer with the Secretary as to the possibility of reformulating the request in order to lower the costs.

(3) *Advance payment.* (i) The Secretary may require advance payment of any fee estimated to exceed \$250. The Secretary may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion.

(ii) For purposes of computing the time period for responding to requests under §261.9(b) of this regulation, the running of the time period will begin only after the Secretary receives the required payment.

(4) *Late charges.* The Secretary may assess interest charges when a fee is not paid within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A. and will accrue

from the date of the billing. This rate of interest is published by the Secretary of the Treasury before November 1 each year and is equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. The rate is effective on the first day of the next calendar quarter after publication.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if no responsive documents are located or if the request is denied, particularly if the requester insists upon a search after being informed that it is likely to be nonproductive or that any records found are likely to be exempt from disclosure. The Secretary shall apply the standards set out in paragraph (h) of this section in determining whether to waive or reduce fees.

(h) *Waiver or reduction of fees—(1) Standards for determining waiver or reduction.* The Secretary or his or her designee shall grant a waiver or reduction of fees chargeable under paragraph (b) of this section where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. The Secretary or his or her designee shall also waive fees that are less than the average cost of collecting fees. In determining whether disclosure is in the public interest, the following factors shall be considered:

- (i) Whether the subject of the requested records concerns the operations or activities of the government;
- (ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;
- (iii) Whether disclosure of the requested information will contribute to public understanding;

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(v) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(vi) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(2) *Contents of request for waiver.* The Secretary shall normally deny a request for a waiver of fees that does not include:

(i) A clear statement of the requester's interest in the requested documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the Board's release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(3) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(4) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Privacy Act of 1974 (5 U.S.C. 552a)) are \$50 or less; but the Secretary may waive fees in excess of that amount.

APPENDIX A TO § 261.10—FREEDOM OF INFORMATION FEE SCHEDULE

Duplication:	
Photocopy, per standard page	\$.10
Paper copies of microfiche, per frame10
Duplicate microfiche, per microfiche35

Federal Reserve System

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APPENDIX A TO § 261.10—FREEDOM OF INFORMATION FEE SCHEDULE—Continued

Search and review:	
Clerical/Technical, hourly rate	20.00
Professional/Supervisory, hourly rate	38.00
Manager/Senior Professional, hourly rate	65.00
Computer search and production:	
Computer operator search, hourly rate	32.00
Tapes (cassette) per tape	6.00
Tapes (cartridge), per tape	9.00
Tapes (reel), per tape	18.00
Diskettes (3½"), per diskette	4.00
Diskettes (5¼"), per diskette	5.00
Computer Output (PC), per minute10
Computer Output (mainframe)	(¹)

¹ Actual cost.*Special Services*

The Secretary of the Board may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information and sending records by special methods such as express mail. The Secretary may provide self-service photocopy machines and microfiche printers as a convenience to requesters.

Fee Waivers

For qualifying educational and non-commercial scientific institution requesters and representatives of the news media, the Board will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other non-commercial use requests, no fees will be assessed for review time, for the first 100 pages of reproduction, or for the first two hours of search time. For requesters qualifying for 100 free pages of reproduction, the fees for duplicate microfiche will be prorated to eliminate the charge for 100 frames.

The Board will waive in full fees that total less than \$5.

The Secretary of the Board or his or her designee will also waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee reduction is available to employees, and applicants for employment who request records for use in prosecuting a grievance or complaint against the Board.

[53 FR 20815, June 7, 1988, as amended at 55 FR 49877, Dec. 3, 1990; 61 FR 60014, Nov. 26, 1996]

Subpart C—Confidential Information Made Available to Supervised Institutions, Financial Institution Supervisory Agencies, Law Enforcement Agencies, and Others in Certain Circumstances

§ 261.11 Confidential supervisory information made available to supervised financial institutions and financial institution supervisory agencies.

(a) *Disclosure of confidential supervisory information to supervised financial institutions.* Confidential supervisory information concerning a supervised bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other institution examined by the Federal Reserve System ("supervised financial institution") may be made available by the Board or the appropriate Federal Reserve Bank to the supervised financial institution.

(b) *Disclosure of confidential supervisory information by supervised financial institution—*(1) *Parent bank holding company, directors, officers, and employees.* Any supervised financial institution lawfully in possession of confidential supervisory information of the Board pursuant to this section may disclose such information, or portions thereof, to its directors, officers, and employees, and to its parent bank holding company and its directors, officers, and employees.

(2) *Certified public accountants and legal counsel.* Any supervised financial institution lawfully in possession of confidential supervisory information of